Single Bench

e.F(166) (3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CG)

WRIT PETITION NO. 4272 OF 2004

BETWEEN

Madan Ram Sahu S/o Rati Ram Sahu, aged about 40 years, resident of Village Parsadkala Tehsil Rajim, district Raipur (CG) & Sarpanch of Gram Panchayat Parsada Kala.

PETITIONER

A N D

1. The State of Chhattisgarh, through the Secretary Department of Panchayat, Mantralay, D.K.S. Building, Raipur (CG).
2. Director, Panchayat, Chhattisgarh, Raipur.
3. Additional Collector, Gariyaband, District Raipur (CG).
4. Sub Divisional Officer, Gariyaband, District Raipur (CG).
5. Ram Kumar S/o Johan Dewangan .
6. Dukhu Ram S/o Khemu Nishad .
7. Mannu Lal S/o Santram Dewangan .
8. Ram Prasad S/o Vishnu Sahu .
9. Hukumat Ram Sahu, Secretary (Panchayat Karmi) Gram Parsadakal, Tehsil Rajim District Raipur.

(Sl.no. 4 to 9 all resident of Village Parsadakala Tehsil Rajim District Raipur (CG).

10. Tehsildar Gariyaband, District Raipur (CG).

RESPONDENTS

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

P.R. No. 4288 Presented by Shri A. Tiwari dated 3.11.04

3/11/04

22/11/04

(30)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

W.P-No. 4272/04

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

16-12-2004

Shri Awadh Tripathi, counsel for the petitioner.
Shri Sanjay S. Agrawal, Government Advocate appears for the respondent Nos.1 to 4 and 10 on advance copy.

Heard on admission and M.(W.)P.No.4268/2004 for grant of interim relief.

Learned counsel for the petitioner, relying on the judgment passed by this Court in Smt. Rani Bai vs. State of Chhattisgarh and others, reported in 2002(3) MPHT 10 (CG), has contended that, petitioner has not been given opportunity of hearing, therefore, the order passed by Sub-Divisional Officer is *ab initio* void, and although the petitioner has challenged that order before Collector in appeal, the writ jurisdiction can be invoked to correct the miscarriage of justice.

Petitioner is a Sarpanch of Gram Panchayat Parsadakala. He was served with a show cause notice dated 20-9-2004 containing allegations against him regarding preparation of false muster roll and financial irregularities. In that notice, it was specifically stated that petitioner is guilty of misconduct and, therefore, he was required to show cause why he should not be removed from his post. He was given the date of 29-9-2004 to submit his reply. On 29-9-2004, the petitioner did not file any reply, then the matter was fixed for 7-10-2004. On that date also, the petitioner did not file his reply but filed an application for

XI-HC—78

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	adjournment. That application was rejected by the Sub-Divisional Officer mentioning reasons therefor and the case was fixed for 13-10-2004. On that date, final order was passed by Sub-Divisional Officer, wherein it was held that petitioner is guilty of misconduct, and in public interest, he cannot remain on the post of Sarpanch. Therefore, petitioner was removed from the post of Sarpanch with additional direction that by preparing false muster roll, amount has been paid, therefore, half of the said amount should be recovered from the petitioner. Petitioner filed an appeal before the Additional Collector in accordance with rule, and also filed an application for staying the order passed by the Sub-Divisional Officer. The Additional Collector, after hearing, dismissed the stay application on the ground that allegation against petitioner is regarding grave financial irregularities. The refusal of stay has been challenged in revision. The revisional Court also rejected the same. It is pertinent to mention here that, this is not a case where reasonable opportunity has not been afforded to the petitioner but this is a case where petitioner himself did not avail the opportunity afforded to him and tried to avoid the hearing. The appeal is pending before the competent authority for final disposal. The facts of this case is distinguishable with that of the case of Smt. Rani Bai (supra).	

(32)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

W.P. No. 4272/04

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Taking into consideration that, this is not a fit case in which, despite the fact that appeal is pending, the writ jurisdiction should be invoked to quash the order passed by Sub-Divisional Officer, therefore, the petition is liable to be dismissed and is accordingly dismissed summarily. **However, it is directed that, the Appellate Court shall decide the appeal on its own merit without being influenced by any of the observations made herein.** **In the light of above order, M.(W.)P.No.4268/2004 for grant of interim relief and I.A.No.8636/2004 for urgent hearing stand disposed of.** **Certified copy as per rules.** **Sd/-** **V.K.Shrivastava** **Judge**	

G.singh

21.12.04